By e-mail
European Commission
Directorate-General for Financial Stability, Financial Services and Capital Markets Union
Mr John Berrigan
1049 Brussels
BELGIUM

Date	8 June 2020
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Subject	Response AFM to public consultation on the review of the Non-Financial Reporting Directive

Dear Sir,

The Dutch Authority for the Financial Markets (AFM) welcomes the initiative of the European Commission (EC) to launch a public consultation on the review of the Non-Financial Reporting Directive[1] (NFRD). The AFM has responded to this consultation through the online questionnaire on the website of the European Commission. In this letter, the AFM wishes to reiterate its reactions made in the online questionnaire. For reasons of transparency, the AFM will publish this letter on its website.

The AFM is an independent market conduct authority that supervises the conduct of the entire financial market sector in the Netherlands: savings, investment, insurance, loans, pensions, capital markets, asset management, accountancy and financial reporting. The AFM is committed to promoting fair and transparent financial markets. Because of these broad oversight tasks, the AFM is a member of various European bodies and committees, such as the European Securities Markets Authority (ESMA) and the Committee of European Audit Oversight Bodies (CEAOB).

As a member of ESMA and the CEAOB, the AFM acknowledges their respective responses to the consultation on the review of the NFRD. On some points, however, the AFM has a stronger position. Therefore, in this letter the AFM wants to emphasize those specific subjects that are of particular importance to the AFM, and where the AFM takes a stronger position.

Annex 1 to this letter contains all answers the AFM has provided in response to questions from the consultation document.

[1] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

A. Reporting standard on NFI necessary to improve comparability, consistency, relevance and reliability of NFI[2]

The AFM believes that the non-financial information (NFI) currently disclosed under the NFRD is not always comparable, consistent, relevant, and reliable. Therefore, the AFM supports the development of a common standard for NFI, and sees it as a necessary step to improve the comparability, consistency, relevance, and reliability of NFI.

In addition, the AFM would like to add that requiring assurance to be provided on non-financial information would enhance the reliability of the non-financial information.

B. International standard preferred over European standard on reporting NFI[3]

Due to the international nature of the financial markets, the AFM strongly prefers the development of a global standard for the disclosure of NFI by listed companies. The absence of a global standard on non-financial reporting is one of the biggest barriers for investors to incorporate NFI in their decision-making process. If a global standard would not be achievable in the near future, the AFM would like to suggest first seeking possibilities for co-operation between countries around the world that adopted IFRS, before developing a solely European NFI reporting standard.

C. Include NFI in management report, not in separate document[4]

The AFM believes that reporting key financial and non-financial information by way of integrated reporting is essential. Integrated reporting takes financial information, NFI factors, short term and long term value creation on these factors into account. Integrated reporting gives a comprehensive picture of the performance of a company's interconnected and interrelated financial and non-financial information. Also, by integrating financial and non-financial information a company could increase the trust and confidence of its stakeholders and the legitimacy of its operations. This is essential to keep pace with the new economic and social reality and to be relevant. Therefore, the AFM considers that the non-financial statement should be included in the management report.

[2] This paragraph contains text from the explanatory remarks provided by the AFM in the online questionaire with regard to Question 1 of the consultation document:
- *Question 1: To what extent do you agree or disagree with the following statements about possible problems with regard to non-financial reporting? Please provide any comments or explanations to justify your answers to questions 1 to 7.*

[3] Idem.

[4] This paragraph contains text from the explanatory remarks provided by the AFM in the online questionaire with regard to Question 38 of the consultation document:
- *Question 38: If companies are allowed to publish the required non-financial information in a report that is separate from the management report, to what extent do you agree with the following approaches?? Please provide any comments regarding the location of reported non-financial information.*

D. Need to streamline interaction between European legislation[5]

The AFM believes there is a need to ensure consistency between the NFRD and other pieces of legislation in the sustainable finance space, particularly the Sustainable Finance Disclosure Regulation[6] (SFDR) and the Taxonomy Regulation.

The AFM also believes there is a need to amend the NFRD to establish the necessary coordination with the Transparency Directive[7] (TD). Firstly, the non-financial statement should be mandatorily included as part of the management report as provided for by Article 4 of the TD. Secondly, in the same Article 4 the appropriate cross-references to Articles 19a and 29a should be inserted for what concerns the contents of the (consolidated) non-financial statements. This also calls for streamlining with the Accounting Directive.[8] If NFI were to be made publicly in a digital manner with tagging, the AFM would additionally call for streamlining the NFRD with the ESEF Regulation[9] that supplements the TD.

Furthermore, where assurance on NFI is to be provided by statutory auditors, the AFM would also call for streamlining the NFRD with the Audit Directive[10] and Audit Regulation[11], including with respect to quality assurance on the assurance services.

[5] This paragraph contains text from the explanatory remarks provided by the AFM in the online questionaire with regard to Question 6 of the consultation document:
- *<u>Question 6</u>: How do you find the interaction between different pieces of legislation (You can provide as many answers as you want). Please provide any comments or explanations to justify your answers to questions 1 to 7..*

[6] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.
[7] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.
[8] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC
[9] Commission Delegated Regulation (EU) 2019/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to technical standards on the specification of a single electronic reporting format.
[10] Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC.
[11] Regulation (EU) 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC.

In conclusion
The AFM would welcome the opportunity to discuss further the issues raised by our responses to the questions from the consultation document.

Yours sincerely,
The Dutch Authority for the Financial Markets

Laura van Geest
Chair of the Executive Board

Hanzo van Beusekom
Member of the Executive Board

Annex 1: AFM's responses to the questions in the consultation

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1. Quality and scope of non-financial information to be disclosed

Question 1: To what extent do you agree or disagree with the following statements about possible problems with regard to non-financial reporting?

	1	2	3	4	5	Don't know
The lack of comparability of non-financial information reported by companies pursuant to the NFRD is a significant problem.					x	
The limited reliability of non-financial information reported by companies pursuant to the NFRD is a significant problem.				x		
Companies reporting pursuant to the NFRD do not disclose all relevant non-financial information needed by different user groups.			x			

(1= mostly disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

Question 3: Are there additional categories of non-financial information related to a company's governance and management procedures, including related metrics where relevant, (for example, scenario analyses, targets, more forward-looking information, or how the company aims to contribute to society through its business activities) that companies should disclose in order to enable users of their reports to understand the development, performance, position and impacts of the company? Please specify (no more than three).

1. Forward-looking information, specifically targets so that users of the non-financial statement are able to put the issuer's results into context.
2. Scenario analysis
3. Governance of non-financial matters within the company

Question 4: In light of the importance of intangibles in the economy, do you consider that companies should be required to disclose additional non-financial information regarding intangible assets or related factors (e.g. intellectual property, software, customer retention, human capital, etc.)?

Yes	No	Don't know
x		

Question 5: To what extent do you think that the current disclosure requirements of the NFRD ensure that investee companies report the information that financial sector companies will need to meet their new disclosure requirements?

Not at all	To some extent but not much	To a reasonable extent	To a very great extent	Don't know
	x			

Question 6: How do you find the interaction between different pieces of legislation (You can provide as many answers as you want)

It works well	There is an overlap	There are gaps	There is a need to streamline	It does not work at all	Don't know
			x		

Question 7: In order to ensure better alignment of reporting obligations of investees and investors, should the legal provisions related to non-financial reporting define environmental matters on the basis of the six objectives set-out in the taxonomy regulation: (1) climate change mitigation; (2) climate change adaptation; (3) sustainable use and protection of water and marine resources; (4) transition to a circular economy (5) pollution prevention and control; (6) protection and restoration of biodiversity and ecosystems?

Yes	No	Don't know
x		

Please provide any comments or explanations to justify your answers to questions 1 to 7.

Q1: The AFM believes that the non-financial information (NFI) currently disclosed under the NFRD is not always comparable, consistent, relevant, and reliable. Therefore, the AFM supports the development of a global common standard for NFI, and sees it as a necessary step to improve the comparability, consistency, relevance, and reliability of NFI.

In addition, the AFM would like to add that requiring assurance to be provided on non-financial information would enhance the reliability of the non-financial information.

Due to the international nature of the financial markets, the AFM strongly prefers the development of a global standard for the disclosure of NFI by listed companies. The absence of a global standard on non-financial reporting is one of the biggest barriers for investors to incorporate non-financial information (NFI) in their decision-making process. If a global standard would not be achievable in the near future, the AFM would like to suggest first seeking possibilities for co-operation between countries around the world that adopted IFRS, before developing a solely European NFI reporting standard.

Q3: The AFM does not consider that issuers should be required to provide disclosure on any non-financial matters beyond those set out in Article 19a (notwithstanding intangibles, covered under Q4). Rather, the AFM suggests that the focus should be on ensuring that comparable, reliable and relevant disclosure is made on the non-financial matters on which disclosure is currently required – environment, social and employee issues, human rights, anti-corruption and bribery.On the other hand, the AFM suggests that it would be relevant to focus on specific categories of non-financial information within those currently required by Article 19a. Firstly, the AFM considers that issuers should specifically be required to include (more) forward-looking information in the non-financial statement, more specifically by providing targets for how they intend to implement their policies and strategies in relation to each of the non-financial matters. Including targets will allow users of non-financial statements, particularly investors, to put the issuer's policies and strategies into context and to understand how quickly the issuer is making progress towards its objectives. The need for more forward-looking information was also highlighted in the evidence which ESMA collected in connection with its advice to the Commission on undue short-term pressure on corporations. Secondly, the AFM is also of the view that it would be helpful to specifically require issuers to include scenario analysis, particularly in relation to environmental matters, including climate change. This type of information will better permit users of the non-financial statement to understand an issuer's ability to cope with different possible future developments, allowing them to assess the issuer's readiness and resilience towards such developments. Thirdly, the AFM considers that issuers could be required to provide more detailed disclosure on how non-financial matters are governed within their company, again because this is important for users of non-financial information to put the rest of the non-financial disclosure into context. Additionally, in order to actively include companies in the pursuit of the Sustainable Development Goals (SDGs), the AFM suggests to require companies to report on the contribution of the company to the SDGs.

Furthermore, the AFM suggests that the detailed disclosure requirements under the NFRD should be developed in consideration of the requirements placed on financial market participants under the Regulation on sustainability-related disclosures in the financial services sector (SFDR), as elaborated further under Q5 below. A level of flexibility should be built in to the requirements, as new areas of disclosure may emerge within short time frames. For example, the COVID-19 pandemic led to a stronger focus on and demand for information in relation to social and employee matters; if a harmonised reporting framework had been in place during the pandemic, it would have been necessary to implement quick adaptations to the disclosure expected from issuers to reflect the changing context.

Q4: Due to their contribution to long-term value creation, the AFM is of the view that issuers should be required to provide disclosure on intangibles in the non-financial statement. While some of the intangibles may also be captured as part of the non-financial matters required to be disclosed in the context of employee or social matters already today, there is an increasing demand for improving the level of disclosures on aspects that go beyond those matters, such as an issuer's human capital, its reputation or customer base. Intangibles provide essential information about an issuer's value creation potential and the lack of disclosure surrounding intangible assets creates an information gap between information available to issuers and that available to investors. The AFM is of the view that this is unhelpful to investors and issuers alike. At the same time, the AFM acknowledges the inherent challenges in reporting on intangibles, as valuation of such assets is generally exposed to a significant level of subjectivity. Establishing suitable disclosure requirements in this field will therefore be an important task, as will considerations surrounding how to provide assurance on such disclosure as no audit standard currently exists on which such assurance can be based.

Q5: The information which financial market participants must disclose about their investee companies has to originate from those companies. Therefore, the requirements in the NFRD and those in the recent SFDR need to be closely linked which currently is not the case. The AFM suggests the linkage could be enhanced by considering the requirements placed on financial market participants in Articles 4 and 7 of the SFDR, and the related Level 2 requirements to be delivered by the ESAs on principal adverse impact indicators, when elaborating the more detailed disclosure requirements for issuers under the NFRD. The objective would be for disclosure under the NFRD to facilitate the obligation of financial market participants to provide disclosure under the SFDR and ensure consistency between the two pieces of legislation.

Q6: The AFM believes there is a need to ensure consistency between the NFRD and other pieces of legislation in the sustainable finance space, particularly the Sustainable Finance Disclosure Regulation (SFDR) and the Taxonomy Regulation.

The AFM also believes there is a need to amend the NFRD to establish the necessary coordination with the Transparency Directive (TD). Firstly, the non-financial statement should be mandatorily included as part of the management report as provided for by Article 4 of the TD. Secondly, in the same Article 4 the appropriate cross-references to Articles 19a and 29a should be inserted for what concerns the contents of the (consolidated) non-financial statements. This also calls for streamlining with the Accounting Directive. If NFI were to be made publicly in a digital manner with tagging, the AFM would additionally call for streamlining the NFRD with the ESEF Regulation that supplements the TD.

Furthermore, where assurance on NFI is to be provided by statutory auditors, the AFM would also call for streamlining the NFRD with the Audit Directive and the Audit Regulation, including with respect to quality assurance on the assurance services. **Q7:** Lastly, the AFM considers that defining environmental matters under the NFRD on the basis of the six objectives set out in the Taxonomy Regulation would be a helpful way of ensuring consistency and compatibility between the disclosure requirements placed on issuers and investors and would facilitate firms' new NFRD disclosure obligation in Article 8 of the politically agreed Taxonomy Regulation. Like ESMA, the AFM observes that the notion of 'environmental matters' in the NFRD is sufficiently broad to also include information that relate to the precautionary principle of 'do no significant harm' as laid down in the Taxonomy Regulation and in the SFDR. Furthermore, this could be a way of elaborating the content which issuers are expected to cover in relation to environmental matters under the NFRD. Such alignment would also help future work for the ESAs when developing technical standards for taxonomy product disclosures under the SFDR as set out in Article 25 of the politically agreed Taxonomy Regulation. In using the six objectives from the Taxonomy Regulation to define NFRD disclosure, it should be taken into account that issuers can report on these in two ways; whether their activities positively contribute to the objectives and whether their activities significantly harm the objectives.

2. Standardisation

Question 8: In your opinion, to what extent would a requirement on companies to apply a common standard for non-financial information resolve the problems identified?

Not at all	To some extent but not much	To a reasonable extent	To a very great extent	Don't know
			x	

Question 9: In your opinion, is it necessary that a standard applied by a company under the scope of the Non-Financial Reporting Directive should include sector-specific elements?

Yes	No	Don't know
x		

Question 10: To what extent would the application of one of the following standards or frameworks, applied on its own, resolve the problems identified while also enabling companies to comprehensively meet the current disclosure requirements of the Non-Financial Reporting Directive, taking into account the double-materiality perspective (See section 4)?

	1	2	3	4	Don't know
Global Reporting Initiative			x		
Sustainability Accounting Standards Board			x		
International Integrated Reporting Framework		x			
Another framework or standard *					

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

Question 11: If there were to be a common European non-financial reporting standard applied by companies under the scope of the NFRD, to what extent do you think it would be important that such a standard should incorporate the principles and content of the following existing standards and frameworks:

	1	2	3	4	Don't know
Global Reporting Initiative			x		
Sustainability Accounting Standards Board			x		
International Integrated Reporting Framework		x			
Task Force on Climate-related Financial Disclosures (TCFD)				x	
UN Guiding Principles Reporting Framework (human rights)			x		
CDP		x			
Carbon Disclosure Standards Board (CDSB)			x		
Organisation Environmental Footprint (OEF)					x
Eco-Management and Audit Scheme (EMAS)					x
Another framework or standard *					

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

Please specify other framework or standard (no more than three).

	1	2	3	4
1. IFRS Foundation (for what concerns the qualitative characteristics of useful information included in Conceptual Framework and to build the necessary connectivity with financial information)			x	
2.				
3.				

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

<u>Question 13:</u> In your opinion, would it be useful for there to be a simplified standard and/or reporting format for SMEs?

Yes	No	Don't know
		x

<u>Question 14:</u> To what extent do you think that a simplified standard for SMEs would be an effective means of limiting the burden on SMEs arising from information demands they may receive from other companies, including financial institutions?

Not at all	To some extent but not much	To a reasonable extent	To a very great extent	Don't know
				x

<u>Question 16:</u> In light of these responses, to what extent do you agree that the body responsible for developing a European non-financial reporting standard should also have expertise in the field of financial reporting in order to ensure "connectivity" or integration between financial and non-financial information?

Not at all	To some extent but not much	To a reasonable extent	To a very great extent	Don't know
		x		

<u>Question 17:</u> The key stakeholder groups with an interest in and contributing to the elaboration of financial reporting standards have historically been investors, preparers of financial reports (companies) and auditors/accountants. To what extent to do you think that these groups should also be involved in the process of developing a European non-financial reporting standard?

	1	2	3	4	Don't know
Investors				x	
Preparers				x	
Auditors/accountants				x	

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

<u>Question 18:</u> In addition to the stakeholders referred to in the previous question, to what extent to do you consider that the following stakeholders should be involved in the process of developing a European non-financial reporting standard?

	1	2	3	4	Don't know
Civil society representatives/NGOs			x		
Academics			x		
Other*					

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

<u>Question 19:</u> To what extent should the following European public bodies or authorities be involved in the process of developing a European non-financial reporting standard?

	1	2	3	4	Don't know
European Securities Markets Authority (ESMA)				x	
European Banking Authority (EBA)				x	
European Insurance and Occupational Pensions Authority (EIOPA)				x	
European Central Bank (ECB)				x	
European Environment Agency (EEA)				x	
Platform on Sustainable Finance[12]			x		
Other*				x	

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

*Please specify other European public bodies or authorities that you consider should be involved in the process of developing a European non-financial reporting standard (no more than three).

[12] Established under the Regulation on the establishment of a framework to facilitate sustainable investment (the "Taxonomy Regulation"), not yet published in the EU Official Journal.

	1	2	3	4
1. European Union Agency for Fundamental Rights (FRA)				x
2. Committee of European Audit Oversight Bodies (CEAOB)		x		
3.				

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

Question 20: To what extent to do you consider that the following national authorities or bodies should be involved in the process of developing European non-financial reporting standards?

	1	2	3	4	Don't know
National accounting standards-setters		x			
Environmental authorities		x			
Other*					

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

Please provide any comments or explanations to justify your answers to questions 8 to 20.

Q9: The AFM strongly supports the introduction of disclosure standards in order to promote more relevant, reliable and comparable non-financial disclosures. These standards should take into account the need to provide both cross-sectorial comparability as well as sector-relevant information when this is necessary to faithfully reflect the performance and position of an issuer with respect to non-financial matters. Sector-specific elements should be introduced when they genuinely add to the information needs in a specific sector.

Q11: In order to improve the connectivity between financial and non-financial information, we believe that the standards should build on key features and principles of high-quality information that are shared amongst the most widely used standards, including IFRS.

Q13-15: As it is already the case now with the NFRD requirements, the possibility to apply different standards or parts of different standards is not sufficient to meet the information needs of users and the same concern would arise with a voluntary standard for SMEs, in particular listed ones. Therefore, the AFM is of the view that listed SMEs should be brought into the scope of the

NFRD. The AFM believes that all entities on regulated markets should apply the same standards for NFI. Based on the call in the market for a lighter disclosure regime for SMEs, we ask the European Commission to perform a cost-benefit analysis, taking into account the costs of the different disclosure regimes.

For what concerns non-listed SMEs, the AFM suggests that proportionality considerations make it necessary not to include these issuers under the NFRD, whether for the light or the full disclosure regime. However, the AFM suggests that the EC could consider scoping in certain non-listed SMEs with a particularly significant impact on non-financial matters, for example heavy polluters. In any case, the possibility should be given to non-listed SMEs to comply with the light or the full disclosure standard if they wish to do so.

Q16-20: In its advice on undue short-term pressure on corporations, ESMA recommended that the EC play a leadership role in promoting the establishment of a unified set of international ESG disclosure standards compatible with the global nature of financial markets and sustainability challenges. To this end, ESMA recommended that the EC assess the feasibility of achieving the necessary convergence and consolidation at global level in the field of non-financial disclosures in consultation with all relevant stakeholders, also via the involvement of the Platform on Sustainable Finance, and taking into account the existing initiatives of the standard-setters that are currently active in the non-financial reporting space and which have already put in place extensive guidance. In considering an international standardisation solution for non-financial reporting, we would suggest the EC to assess whether this initiative could be developed within the structure of the IFRS Foundation.

At the same time, given the need to proceed rapidly towards improving the level of comparability, relevance and reliability of non-financial disclosures in the EU, ESMA envisaged that, as a short-term measure and in order to help achieving a more complete standardisation, binding measures should be introduced in EU legislation via delegated acts to provide for (i) key general principles underpinning high-quality non-financial information, including guidance on the assessment of materiality and on the provision of forward-looking information on ESG risks and opportunities articulated over a reasonably extended time horizon; and (ii) a limited set of specific disclosure requirements, including indicators and relevant targets to address the different requirements for each of the relevant non-financial matters already envisaged by the NFRD. These principles and requirements should be based on the needs of users of non-financial information, including investors as well as other stakeholders and they should build on the relevant existing international framework(s) which can be adopted to prepare the required disclosures. The AFM considers these recommendations are still valid for the purpose of contributing to the review of the NFRD. The AFM suggests the EC to involve ESMA in the implementation of these recommendations in technical standards.

When considering how to implement these recommendations, the AFM recommends the EC to follow the below principles for ‘good’ standard-setting:

Independently-governed: setting standards – both when an international standard-setter is identified and when seeking a European solution as an intermediate step – should be conducted by a body whose institutional mandate caters for the development of high-quality reporting standards based on a sound and transparent due process and built around independent governance. This is necessary to prevent the risk of undue pressures from interested parties in the standard-setting process. The IFRS Foundation’s approach to standard-setting could be a useful benchmark to develop standards for non-financial reporting, as it shows that it is possible to combine independent standard-setting with public accountability and extensive outreach.

Public sector driven and overseen: private sector initiatives have been key in developing the non-financial reporting standards and frameworks which have become of wide application. It is now time for the public sector to step in and promote consolidation of these different initiatives at global level. The positive experience of the TCFD shows that a strong and clear public sector commitment is sufficient to provide the necessary incentives to private sector representatives to achieve a high-quality solution on a timely basis. If an international solution for non-financial standard-setting that mirrors the governance and due process of the IFRS Foundation is not achievable in the near term, a European public body should be directly responsible for this task while remaining committed to creating the conditions for international standardisation in the medium term.

Investor protection oriented: the standard-setting process should cater for the information which is necessary across the investment chain, focusing on providing the level of transparency that is necessary to investors for their respective capital allocation decisions, as well as to other stakeholders including consumers and representatives of the civil society. The body entrusted with standard-setting should focus on this key objective, ensuring some degree of connectivity with financial disclosures, while engaging extensively with all interested parties, including preparers, investors and civil society representatives.

With regards to a specific standard-setting solution, the AFM acknowledges the alignment efforts achieved in the context of the Corporate Reporting Dialogue initiative and particularly the commonalities identified amongst TCFD, CDP, GRI and SASB which are an encouraging starting point for developing indicators and narrative disclosures that can be applicable by all entities. The AFM also acknowledges the importance of taking into account the framework provided by the Sustainable Development Goals when disclosing targets and objectives in relation to ESG factors. In the AFM’s view, together with outlining general principles for high-quality non-financial disclosures which would constitute a ‘conceptual framework’ for non-financial disclosure, it would be important to define disclosure requirements that can address the different non-financial matters for all sectors, complemented, where necessary, by sector-specific guidance. Such requirements should be accompanied by clear materiality guidance and envisage the possibility for issuers to include additional information if it is material. In a nutshell, the AFM supports a three-layered approach with general principles for high-quality non-financial information, cross-sectorial disclosure requirements, including narrative information and indicators, and specific sectorial guidance. These requirements should be built around disclosure objectives and minimum core requirements.

For the purpose of developing an intermediate European solution, we note that ESMA has a mandate in the area of sustainable finance, strengthened by the recent ESA review which emphasised the role of the ESAs to "*provide guidance on how sustainability considerations can be effectively embodied in relevant Union financial legislation and promote coherent implementation of those provisions upon adoption*". In addition, ESMA has already been entrusted, together with the other ESAs, with a mandate in the area of sustainable finance disclosures, most notably to develop draft regulatory technical standards to further specify the content, methodologies and presentation of information in relation to sustainability indicators in accordance with the SFDR. In light of its mandate, ESMA has also engaged in extensive work in the area of corporate reporting. Therefore, the AFM suggests ESMA to have a leading role in conducting the standardisation work relating to non-financial information, in close cooperation with EBA and EIOPA, and relying on important contributions from the European Environmental Agency (EEA) and the European Union Agency for Fundamental Rights (FRA), to develop delegated acts for non-financial reporting by issuers, so as to ensure consistency of requirements across the investment chain.

The AFM also urges to consult the Committee of European Audit Oversight Bodies (CEAOB) on the issues related to assurance during the process of developing non-financial reporting standards, particularly if statutory auditors are required to provide assurance on non-financial information.

One way of organising the work on delegated acts could be to draw on the experience of cooperation amongst the ESAs as, for example, is already envisaged in the ESA review for other topics such as anti-money laundering where one ESA has a coordination role with the others contributing with the necessary expertise and experience in their respective fields of responsibility. In developing the delegated acts, the ESAs would leverage on a sound and inclusive due process which is based on extensive engagement with multiple stakeholders via public consultations, regular interactions with our statutory stakeholder groups and ad-hoc outreach activities to further involve other relevant actors from the private sector, civil society and the public at large. In addition, the input of the Platform on Sustainable Finance should also be requested as a 'sounding board' for the proposed standards.

3. Application of the principle of materiality

Question 21: Do you think that the definition of materiality set-out in Article 2(16) of the Accounting Directive is relevant for the purposes of determining which information is necessary to understand *a company's development, performance and position*?

No, not at all	To some extent but not much	To a reasonable extent	Yes, to a very great extent	Don't know
		x		

Question 22: Do you think that the definition of materiality set-out in Article 2(16) of the Accounting Directive is relevant for the purposes of determining which information is necessary to understand *a company's impacts on society and the environment*?

No, not at all	To some extent but not much	To a reasonable extent	Yes, to a very great extent	Don't know
		x		

Question 23: If you think there is a need to clarify the concept of 'material' non-financial information, how would you suggest to do so?

The AFM observes that companies still appear to find it challenging to apply the materiality concept to non-financial information. This hampers a robust implementation of the NFRD.

While the materiality notion included in the Accounting Directive was developed for financial reporting purposes, the AFM considers that this notion is useful also for the purpose of non-financial reporting, since the concept that information is material if its omission or misstatement could be reasonably expected to influence decision-making is a general one. However, as ESMA indicated in its 2019 letter in response to the EC's consultation on the revision of the Non-Binding Guidelines on Non-Financial Reporting (ESMA32-334-109), it is important to consider whether this definition needs to be adapted to take into account the specificities of materiality assessments for non-financial reporting. We would recommend the EC in particular to consider whether further specifications on the application of this definition to non-financial reporting need to be provided, especially taking into account the wider range of users and specific information needs.

Most importantly, the materiality assessment which issuers undertake when determining which financial information to disclose largely focuses on investor needs. On the other hand, the materiality assessment which should be carried out when determining which non-financial information to disclose should take a much wider range of stakeholders into account. This is reflected in the double materiality perspective, which requires the issuer to disclose not only non-financial information which impacts its development, performance and position – and can as such have a significance for its financial situation – but also non-financial information about the issuer's impact on its surroundings – which may not, at least in the short term, affect its financial situation. The second kind of non-financial information will be relevant not only to investors but also to customers, suppliers, employees, the public at large etc. (though some of these stakeholders may also, to an extent, be interested in the first kind of non-financial information). The AFM also acknowledges that the reference to the double materiality notion is helpful in 'opening up' the traditional concept of materiality to acknowledge the need to also consider the impacts and effects that occur over a longer term and that, in principle, may also be relevant for long-term oriented investors along with other stakeholders. In this respect, disentangling within the double materiality notion what is relevant for investors vis-à-vis other stakeholders may be arbitrary.

On this basis, the AFM proposes to provide more clarity on the fact that the perspective of a wider set of stakeholders should be taken into account when performing the materiality assessment of non-financial information. While investors remain the key recipients of the information reported in non-financial statements, linking the materiality concept to the information needs of different stakeholders will assist companies in identifying the information which they are expected to make available under the double materiality concept.

Secondly, the AFM considers it would be important to clarify whether the double materiality perspective requires that a piece of information should both be relevant for the issuer's development, performance and position, on one hand, and for its impact on its surroundings, on the other in order to be considered material, or whether a piece of information is to be considered material if it meets just one of these thresholds. There is currently some discussion about this among Member States and in the market, and the different understandings lead to non-harmonised disclosure since the first approach implies a much narrower scope of the NFRD.

Thirdly, the AFM suggests it would be helpful to clarify how the double materiality principle relates to each of the non-financial matters – environment, social and employee issues, human rights, anti-corruption and bribery – on which the NFRD requires disclosure, as it does not apply in the same way to all four. In this regard, it may be helpful to include sector-specific examples as part of the future reporting standards.

However, the AFM does not necessarily consider that the above clarifications need to be inserted in the definition of materiality itself. Rather, the AFM suggests that it might be helpful to provide

detail in the future standards for non-financial information on how to perform the materiality assessment specifically in relation to non-financial information, focusing on the points raised above. Overall, the AFM suggests that the guidance on materiality which is included in the EC Non-Binding Guidelines on Non-Financial Reporting, and particularly in the supplement on reporting climate-related information, could be a helpful starting point for elaborating on these points. Furthermore, the AFM suggests that it would be helpful to clarify whether and how the double materiality principle applies to non-financial information included in the management report itself. The only two changes which the AFM does suggest to the definition of materiality is (i) to clearly state that it relates to information in not only financial, but also non-financial, statements and (ii) to align it with the amended definition of material in IAS 1 by adding a reference to <u>obscuring</u> information.

<u>Question 24:</u> Should companies reporting under the NFRD be required to disclose their materiality assessment process?

Yes	No	Don’t know
x		

Please provide any comments or explanations to justify your answers to questions 21 to 24.

Q24: The AFM considers it important that companies disclose their materiality assessment process. Creating transparency around the materiality assessment will allow stakeholders to understand how the reported information was selected and as such to evaluate its relevance and completeness. When disclosing their materiality assessment process, the AFM suggests that companies should be required to explain (1) the general process they used for identifying material items (for example, which departments were involved in identifying and formulating risks, how relevant stakeholders were identified and consulted, the frameworks used to identify issues) and (2) based on that process, how each topic, or each group of topics, reported in the non-financial statement was deemed material.

4. Assurance

<u>Question 25:</u> Given that non-financial information is increasingly important to investors and other users, are the current differences in the assurance requirements between financial and non-financial information justifiable and appropriate?

No, not at all	To some extent but not much	To a reasonable extent	Yes, to a very great extent	Don’t know
	X			

<u>Question 26:</u> Should EU law impose stronger assurance requirements for non-financial information reported by companies falling within the scope of the NFRD?

Yes	No	Don’t know
X		

<u>Question 27:</u> If EU law were to require assurance of non-financial information published pursuant to the NFRD, do you think that it should require a *reasonable* or *limited* assurance engagement on the non-financial information published?

Reasonable	Limited	Don’t know
	x	

<u>Question 28:</u> If EU law were to require assurance of non-financial information published pursuant to the NFRD, should the assurance provider assess the reporting company’s materiality assessment process?

Yes	No	Don’t know
X		

<u>Question 29:</u> If assurance of non-financial information was required by EU law, should the assurance provider be required to identify and publish the key engagement risks, their response to these risks and any related key observations (if applicable)?

Yes	No	Don’t know

X		

Question 30: If assurance of non-financial information was required by EU law, do you think that assurance engagements should be performed based on a common assurance standard?

Yes	No	Don't know
X		

If you answered yes in reply to the previous question, please explain whether there is an existing assurance standard that could be used for this purpose or whether a new standard would need to be developed.

The development of a common assurance standard on non-financial information would facilitate consistency in approach by assurance providers and of the related assurance. It would also help to meet the objective of comparability of information.

Question 31: Do you think that an assurance requirement for non-financial information is dependent on companies reporting against a specific non-financial reporting standard?

Yes	No	Don't know
X		

Please provide any comments or explanations to justify your answers to questions 25 to 32.

Q25: Given the increasing interconnections between non-financial information and financial information, the AFM is of the opinion that requiring the same level of "assurance" to be provided on both should be aimed at for the future.

However, it seems difficult to achieve a consistent level of assurance at the current stage of maturity of non-financial reporting, which is far from the maturity of financial information frameworks.

Q26: The AFM considers that the EU law should impose stronger assurance requirements for non-financial information. Requiring assurance on the non-financial information will allow for enhanced reliability and improved quality of non-financial information.

Q27: The maturity of the non-financial reporting framework(s) is far from the maturity of financial information frameworks.

Therefore, at this stage the AFM believes that only limited assurance on the non-financial information should be required. In order to require a higher level of assurance a sound and credible framework for non-financial reporting should be in place.

In the longer term, requiring the same level of assurance to be provided on financial and non-financial information should be aimed at e.g. reasonable assurance. In this perspective, a gradual approach may be considered, for example by requiring stronger assurance requirements on key specified non-financial clear indicators

If the scope of the NFR directive were to be broadened, the need for proportionality for the procedures to be carried out to provide assurance on non-financial information disclosed by Small or Medium Entities should also be considered.

Q28: The reporting company's materiality assessment process will have an impact on the granularity of non-financial information produced. Therefore, it is important to clarify the concept of materiality to allow for a shared understanding between preparers, users of information and assurance providers.

In our view, as part of the assurance procedures, it is crucial that the assurance provider evaluates the reporting company's materiality assessment process as it is an essential part of the preparation of the non-financial information.

Q29: The AFM suggests that an approach aligned with the identification of Key Audit Matters / Most significant assessed risks of material misstatement be considered for the assurance of non-financial information, as per article 10 (2) (c) of Regulation (EU) No 537/2014, as long as the additional information does not impair the final opinion/conclusion.

In line with ESMA's advice to the EC on undue short-term pressure on corporations, the AFM supports the introduction of a requirement relating to mandatory assurance by external auditors not only on the *existence* of the non-financial statement, but also on the *contents* of the statement and its *consistency* with the information provided elsewhere in the management report and in the financial statements.

The AFM notes that mandatory assurance as well as strong and harmonised enforcement should be part of a broader ecosystem of measures that is necessary to improve the quality and consistency of non-financial reporting in the EU. The AFM also calls for consideration of the need of quality assurance with respect to the provision of assurance services for non-financial reporting, preferably in a harmonised manner building on the existing European structures.

In this respect, we consider that the increase in the level of assurance on non-financial information should follow the strengthening of the reporting requirements and in particular with the provision of a sound and credible international standard for non-financial information. In our view, an international reporting standard would also make it easier to adopt an international assurance standard.

The existence of a single reporting standard would also make it possible to bring assurance of non-financial statements closer to the level of assurance on financial statements.

The status quo in Europe is that only a handful of Member States require assurance on the non-financial statement, and this on a limited assurance basis. Bridging the gap between financial and non-financial information is one of the key challenges of the current corporate reporting environment and, for this reason, we would strongly support, as an initial step, at a minimum a requirement for limited assurance. However, we also believe that in order to be future-proof and bring the quality of non-financial information closer to that of financial information, the revised legislation should envisage the possibility to move gradually towards a requirement for reasonable assurance.

One possible approach to strengthen the requirements in a gradual manner would be to develop a phase-in approach whereby, at least for those parts of the non-financial statement that include quantitative measures and the related disclosures, reasonable assurance would be required. For the other parts of the non-financial statement that include narrative disclosures unrelated to quantitative measures and indicators, for a transitional period, a limited assurance requirement could be applied. This would better fit with the nature of these disclosures, as it typically takes more time to establish and test evidence-based processes that support their preparation. After this transitional period, when the processes for the preparation of the non-financial disclosures – both qualitative and quantitative ones – have become more established, reasonable assurance should then be extended to the entire non-financial statement once having properly assessed the related cost-benefit balance.

The AFM also acknowledges that a pre-requisite for introducing mandatory assurance is the availability of a standard on how to provide assurance on non-financial disclosure and the processes underlying the preparation of such disclosure.

In addition, in setting the requirement for mandatory assurance, the AFMA highlights that other implementation aspects should be duly considered, for example whether the non-financial statement is part of the management report and, if so, whether the audit report should convey one single opinion for the management report and the non-financial statement or two separate opinions. In the latter case, the information relating to the non-financial statement should be clearly identifiable in order to enable the reader of the information to understand the level of assurance provided on the different disclosures provided. While these are crucial implementation

aspects, the AFM believes that these questions should be addressed once a decision in favour of mandatory assurance is taken. The AFM recommends that the Committee of European Auditing Oversight Bodies (CEAOB) be involved in any future discussion in this regard. **Q31**: Assurance can be provided regarding the compliance with, and implementation by the company of, a given reporting standard provided the company clearly refers to the reporting standard used to prepare the related information. If the company does not use any specific reporting standard, it will prove difficult to express any assurance.

5. Digitisation

<u>Question 33:</u> To what extent do you agree or disagree with the following statements regarding digitalisation of non-financial information?

	1	2	3	4	5	Don't know
It would be useful to require the tagging of reports containing non-financial information to make them machine-readable.				x		
The tagging of non-financial information would only be possible if reporting is done against standards.					x	
All reports containing non-financial information should be available through a single access point.					x	

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

<u>Question 34:</u> Do you think that the costs of introducing tagging of non-financial information would be proportionate to the benefits this would produce?

No, not at all	To some extent but not much	To a reasonable extent	Yes, to a very great extent	Don't know
				x

Question 35: Please provide any other comments you may have regarding the digitalisation of sustainability information:

The ESEF Regulation constitutes a framework within which it would be possible to expand tagging requirements to non-financial information. However, the AFM considers that today some significant discrepancies exist between the NFRD and the TD which might not facilitate this approach. For instance, the non-financial statement is not necessarily included in the annual management report and as such in the annual financial report, which means that it is not necessarily prepared in xHTML format as foreseen by the ESEF Regulation. The AFM considers that the non-financial statement should be included in the management report, which will facilitate the expansion of tagging requirements to non-financial information.

Nonetheless, feedback from the ESEF Regulation implementation could be useful for introducing tagging of non-financial information. However, the AFM notes that it is too early at this stage to draw any lessons from the ESEF tagging experience, since the ESEF requirements will only be applicable for reporting on financial years from 1 January 2020 onwards.

The pre-requisite to the tagging of non-financial information is the development of a taxonomy. In this respect, the first necessary step is to achieve harmonisation and standardisation of the non-financial information. As such, the development of a common non-financial information reporting standard is essential.

The AFM would also like to flag that a specific requirement in the legislation would be needed if the tagging is to be subject to the same assurance provisions as tagged financial information.

On the one hand, tagging non-financial information is expected to facilitate its accessibility, reduce the cost of collection for users (e.g. asset managers, banks and insurers) and help to promote research activities requiring data series. On the other hand, tagging would require a certain implementation delay, development of specific software and some additional costs for companies.

Please provide any comments or explanations to justify your answers to questions 33 to 35.

Q33: Provided that non-financial information is harmonised and standardised, the AFM thinks that it would be useful to tag non-financial information and render it in a machine-readable format. Harmonisation and standardisation of non-financial information are necessary pre-requisites to the development of a taxonomy and therefore to tagging requirements under the NFRD. Furthermore, in order to tag non-financial information it would be essential for reporting to be done against a robust standard. On the basis of such a standard, a taxonomy should be developed, including both detailed tags for a limited number of widely used KPIs and block tags for narrative non-financial disclosure.

The AFM considers that it would be very beneficial for non-financial information to be made available through a single access point. The same Europe-wide access point should give access to both financial and non-financial information, since users need both types of information to make informed investment decisions and it would be important to give them access to such information without undue cost and effort. The AFM furthermore wishes to highlight that it would be beneficial if the entity (or entities) designated to receive electronic non-financial information from issuers were empowered to perform, at the time of submission, a number of checks on technical format in order to ensure the set-up of effective and time-efficient supervision of compliance. The AFM suggests the EC to involve ESMA in this process.

However, we also wish to highlight that a single access point is a separate project that should not interfere with the review of the NFRD requirements nor with the digitisation of the NFRD disclosures.

Q34: The AFM observes that it is not possible to reliably assess the costs and benefits of the introduction of tagging requirements under the NFRD at this stage. This is because these will largely depend on the specific requirements and it is difficult to make an estimate without knowing:

(1) the scope of entities which will be required to tag non-financial information (whether all entities under the current or future scope of the NFRD or only a subset of them, for example only listed companies);

(2) how many tags companies will be required to apply; and

(3) whether tagging obligations will require the application of detailed tags or of block tags; in this regard it should be highlighted that different types of tags might be introduced depending on the type of disclosure being marked-up (for example block tagging for the description of strategy (such as strategy towards diversity, child labour, corruption, etc.) and detailed tagging for clearly defined KPI's (such as energy used)).

The AFM recommends that a cost-benefit analysis be carried out as part of the establishment of any tagging requirement of non-financial information. The AFM suggests the EC to include ESMA in this analysis.

The AFM notes that costs will be lower for companies preparing their entire annual financial report in ESEF format and tagging their IFRS consolidated financial statements, because they will already have made the investment to procure tools and set up processes which may be, at least in part, overlapping with those needed for tagging the non-financial statement. However, not all companies preparing non-financial statements will also be under the scope of the ESEF tagging requirements and costs for such companies are therefore expected to be higher.

Benefits for users will be higher if non-financial information can be tagged in detail on the basis of a robust standard which enables information to be processed efficiently and effectively in a machine-to-machine environment.

6. Structure and location of non-financial information

Question 36: Other consequences may arise from the publication of the non-financial statement as part of a separate report. To what extent do you agree with the following statements:

	1	2	3	4	5	Don't know
The option to publish the non-financial statement as part of a separate report creates a significant problem because the non-financial information reported by companies is hard to find (e.g: it may increase search costs for investors, analysts, ratings agencies and data aggregators).				x		
The publication of financial and non-financial information in different reports creates the perception that the information reported in the separate report is of secondary importance and does not necessarily have implications in the performance of the company.				x		

1= not at all, 5= to a very great extent]

Question 37: Do you believe that companies should be required to disclose all necessary non-financial information in the management report?

Yes	No	Don't know
x		

Question 38: If companies are allowed to publish the required non-financial information in a report that is separate from the management report, to what extent do you agree with the following approaches?

	1	2	3	4	5	Don’t know
Legislation should be amended to ensure proper supervision of information published in separate reports.					X	
Legislation should be amended to require companies to file the separate report with Officially Appointed Mechanisms (OAMs).					X	
Legislation should be amended to ensure the same publication date for management report and the separate report.					X	

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

Please provide any comments regarding the location of reported non-financial information.

The AFM believes that reporting key financial and non-financial information by way of integrated reporting is essential. Integrated reporting takes financial information, NFI factors, short term and long term value creation on these factors into account. Integrated reporting gives a comprehensive picture of the performance of a company’s interconnected and interrelated financial and non-financial information. Also, by integrating financial and non-financial information a company could increase the trust and confidence of its stakeholders and the legitimacy of its operations. This is essential to keep pace with the new economic and social reality and to be relevant. Therefore, the AFM considers that the non-financial statement should be included in the management report.

However, if the co-legislators decide to maintain the option for the non-financial statement to be located outside the management report, the AFM considers that the following considerations are important (for considerations regarding the scope of issuers which may also have a bearing on the points mentioned below, please see Section 7):

- The TD should be amended to ensure that all national competent authorities have supervision and enforcement powers over the non-financial statement, regardless of its location. This could be done by explicitly mentioning the non-financial statement in Article 4 of the TD, so that it is clearly covered by the TD supervision and enforcement powers of national competent authorities.

- Regulated information under the TD is required to be filed with the OAM of the issuer's home Member State, ensuring easy access for investors and other users of regulated information. However, when the non-financial statement is presented outside the management report, and outside the annual financial report in general, and is not included by reference, it no longer falls within the TD definition of regulated information, and the requirement to file the non-financial statement with the OAM is no longer applicable. ESMA considers it is relevant to ensure the same level of easy access to the non-financial statement regardless of where it is presented, and therefore, also non-financial statements presented outside the management report, and the annual financial report in general, should be filed with the OAM.
- If the non-financial statement is permitted to be presented outside the management report, the content of the two documents should be aligned, so that they do not duplicate information (e.g. description of business model, exposure to non-financial risks affecting the issuer's financial position and performance) and inconsistencies are avoided. The AFM highlights that the issue of streamlining and linking the disclosure in the management report and the non-financial statement can occur even when the non-financial statements sits within the management report, but it is likely to be especially pronounced when the two documents are separate.
- When published separately from the management report, the non-financial statement should be published at the same time as the management report to ensure that it is possible for users of financial and non-financial information to look at this disclosure at the same time, allowing for the non-financial information to provide additional flavour to the financial information.
- Lastly, when the non-financial statement is not included as part of the management report, it should include a statement on the responsibility for the information similar to that set out in TD Article 4(2)(c) for the financial statements and the management report.

Whether non-financial information is in a separate report outside the management report or not, the AFM considers that all those reports should be subject to the same level of supervision, accessibility and the same publication date. As such, the European legislation should be adapted accordingly.

Question 39: Do you consider that the current segregation of non-financial information in separate non-financial and corporate governance statements within the management report provides for effective communication with users of company reports?

No, not at all	To some extent but not much	To a reasonable extent	Yes, to a very great extent	Don't know
	x			

Please provide any comments or explanations to justify your answers to questions 36 to 39.

Q36-37: In line with ESMA's advice to the EC on undue short-term pressure on corporations, the AFM believes that removing the optionality with regard to the location of the non-financial statement is important for several reasons.

Firstly, the optionality has led to some diversity in the way Member States have transposed the NFRD. This means that users of non-financial information cannot always find this information in the same place but have to look within the management report or outside it, depending on the issuer and the Member State in question. Secondly, as the non-financial statement is not required under the TD but under the Accounting Directive, when it is presented outside the management report – given the lack of the necessary coordination between the Accounting Directive and the TD – it would fall outside the scope of supervision of some national competent authorities. This raises an unhelpful barrier to the enforcement of non-financial statements within individual Member States and to the need to promote a convergent supervisory approach across Member States. Thirdly, when issuers present the non-financial statement outside the management report, it is not covered by the statement whereby responsibility is taken for the contents of the reported information (Article 7 of the TD). Fourthly, permitting the non-financial statement to be published separately from the management report and the other information included in the annual financial report does not facilitate the possibility for investors and other stakeholders to consider financial and non-financial information together and as such hampers the connectivity between the two types of disclosure. For these reasons, the AFM recommends making it mandatory to include the non-financial statement in the management report (i.e. removing the option for a completely separate report that is currently included in Articles 19a(4) and 29a(4) of the Accounting Directive).

The AFM is of the view that the split of non-financial information across the two statements risks creating inconsistencies and overlaps in the disclosure. The AFM therefore suggests that it would be beneficial to integrate at least the non-financial information into one statement, if not integrating the non-financial statement and the corporate governance statement altogether**Q39:** The AFM does acknowledge that the non-financial statement and the corporate governance statement have certain important differences and these should be carefully taken into account when considering the integration. For example, the corporate governance statement is required for a different group of companies and has links to national company law. Therefore, if the EC were to consider integrating the non-financial and corporate governance statements, it would be necessary to align the personal scope and possibly the ability to apply the comply-or-explain approach between the two. In relation to the latter, the AFM does not favour application of the comply-or-explain approach to non-financial information, notwithstanding the existing ability of companies to provide a clear and reasoned explanation when they do not undertake policies in relation to one or more of the matters mentioned in Articles 19a(1) and 29a(1) of the Accounting Directive.

Furthermore, the AFM believes that the level of assurance to be provided on the non-financial information should be stronger than the current level of assurance provided on the management report. Indeed, the assurance opinion provided on the management report by the statutory auditor is on whether the management report is consistent with the financial statements and has been prepared in compliance with the law.

7. Personal scope (which companies should disclose)

Question 40: If the scope of the NFRD were to be broadened to other categories of PIEs, to what extent would you agree with the following approaches?

	1	2	3	4	5	Don't know
Expand scope to include all EU companies with securities listed in regulated markets, regardless of their size.					x	
Expand scope to include all *large* public interest entities (aligning the size criteria with the definition of *large undertakings* set out in the Accounting Directive: 250 instead of 500 employee threshold).					x	
Expand scope to include *all* public interest entities, regardless of their size.	x					

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

Question 41: If the scope of the NFRD were to be broadened to non-PIEs, to what extent would you agree with the following approaches?

	1	2	3	4	5	Don't know
Expand the scope to include *large non-listed* companies.					x	
Remove the exemption for companies that are subsidiaries of a parent company that reports non-financial information at group level in accordance with the NFRD.	x					
Expand the scope to include large companies established in the EU but listed outside the EU.					x	
Expand the scope to include large companies not established in the EU that are listed in EU regulated markets.					x	
Expand scope to include *all* limited liability companies regardless of their size.	x					

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

Question 42: If *non-listed* companies were required to disclose non-financial information, do you consider that there should be a specific competent authority in charge of supervising their compliance with that obligation?

Yes	No	Don't know
	x	

If yes, please specify who in your opinion should carry out this task (National Competent Authorities, European Supervisory Authorities, other…) and how.

The AFM thinks Member States should be responsible for establishing the supervision of non-listed companies' compliance with the obligation of disclosing non-financial information. The AFM considers there would be some benefits connected with supervising non-listed issuers' disclosure of non-financial information. However, the AFM observes that there is currently no corresponding supervision by securities regulators of non-listed issuers' disclosure of financial information, and that it would be an unjustifiable inconsistency to have supervision of the non-financial, but not the financial, disclosure of non-listed issuers.

The AFM proposes that, at least for the time being, consideration could be given to expanding the scope of the NFRD to cover large non-listed issuers without imposing supervision on such disclosure.

Furthermore, regardless of the form of the company (listed or non-listed), non-financial information should be accessible to interested stakeholders so that they have all the information needed for their decision-making.

<u>Question 43:</u> To what extent do you agree with the following statements relating to possible changes of the personal scope of the NFRD for financial institutions?

	1	2	3	4	5	Don't know
The threshold criteria for determining which banks have to comply with the NFRD provisions should be different from those used by Non-Financial Corporates.	x					
The threshold criteria for determining which insurance undertakings have to comply with the NFRD provisions should be different from those used by Non-Financial Corporates.	x					

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

Please provide any comments or explanations to justify your answers to questions 40 to 43.

The AFM considers that the review of the NFRD would be the right time to expand the scope of issuers who are subject to the requirement of publishing non-financial information. While the current approach of covering only very large companies was suitable as an initial scope when the requirements on non-financial reporting were introduced, the increased focus on non-financial reporting and the heightened demand from investors and other users for such reporting suggests that a broader scope of entities be covered by the requirement to publish non-financial information.

When assessing how to expand the scope of the NFRD, the AFM suggests that the EC should take the following considerations into account.

Firstly, expanding the scope of issuers required to provide disclosure under the NFRD and as such ensuring that a wider group of companies become subject to the (amended) NFRD rules is important because it increases transparency on non-financial matters. This permits investors and other users of non-financial information to complement financial reporting with non-financial aspects, facilitating more informed decision-making and ultimately protecting investors.

Secondly, transparency considerations should be weighed against considerations of proportionality, so that smaller issuers are not subjected to unduly burdensome disclosure requirements. At the same time, the AFM believes that size is not always an appropriate proxy indicator of an issuer's impact on non-financial matters (or of the impact which non-financial matters have on an issuer). Therefore, the AFM suggests that proportionality considerations could in some cases be overridden by considerations of an issuer's impact on non-financial matters, so that smaller issuers should be scoped in to the NFRD after all. This could for example be the case for smaller issuers who operate in heavily polluting industries. However, the AFM also acknowledges that there may not be a suitable categorisation available to decide which issuers should be scoped in based on their impact, as impact is generally challenging to operationalise (i.e. no "brown" taxonomy has currently been established).

Thirdly, the implementation measures which will be put in place under the SFDR are likely to require financial market participants to provide significant reporting in relation to their investee companies on environmental and social factors, related to the principal adverse impact reporting. These requirements will create a need to obtain information regarding all investee companies of financial market participants subject to the SFDR, regardless of the size or listing status of the investee company. The scope of issuers covered by the NFRD should take into account the need to facilitate financial market participants in meeting their disclosure obligations under the SFDR.

Ideally, the AFM is of the view that the companies to be included in the scope of the NFRD should be determined with reference to a company's impact on, and exposure to, the non-financial matters addressed in the NFRD. However, at present unless a more suitable proxy is identified to operationalise these factors, the AFM suggests that a company's listing status and size should serve as indicators for whether to include them in the scope, thus weighing the need for transparency for especially large and listed companies, against the need for proportionality for smaller and unlisted companies. Based on these considerations, the AFM proposes that the NFRD should be expanded to have the following scope:

- In order to maintain transparency of issuers admitted to trading on a regulated market, all such issuers which fall in the categories of small, medium-sized and large defined in Article

3 of the Accounting Directive should be in the scope of the NFRD. However, to avoid undue administrative burden, they should be required to report according to their size: while large listed issuers should be required to provide the full disclosure required by the NFRD, listed SMEs should be required only to provide a lighter set of information needed for financial market participants to meet their disclosure obligations under the SFDR and to provide minimum information on how non-financial matters affect these entities. In defining the lighter set of information to be required from listed SMEs, the need to avoid any undue burden on these issuers should be taken into account, especially taking due consideration of the impact of the COVID-19 pandemic.

- Large non-listed issuers (cf. Article 3(4) of the Accounting Directive) should be in the scope of the NFRD and be required to provide full disclosure.
- Equally, large public-interest entities (cf. Article 3(4) of the Accounting Directive) should be in the scope of the NFRD and be required to provide full disclosure. In addition to listed issuers which are already mentioned above, this would mean credit institutions, insurance undertakings and issuers designated by a Member State as public-interest entities.

The AFM notes that it has not suggested to include non-listed SMEs in the scope of the NFRD. This is based on considerations of proportionality and on the fact that requirements for non-listed entities are typically less strict than those for listed entities. When financial market participants invest in non-listed SMEs, the burden of obtaining the necessary information on those SMEs to comply with SFDR disclosure requirements would therefore fall on the financial market participants rather than on the investee SMEs. However, the AFM reiterates the point made above that it could possibly be relevant to include within the scope certain non-listed SMEs if their activities are considered to have a particularly significant impact on non-financial matters.

Notwithstanding the above suggestions, the AFM is of the view that before making a final decision to propose any scope expansion the EC should carefully assess the associated costs to issuers and benefits to users of non-financial information to ensure that the right balance is struck. In making this assessment, it would be important to collect data on the environmental and social impact of companies depending on their size and sector. Undertaking such an assessment would be particularly important in relation to expanding the scope to cover listed SMEs, and the EC should in this context consider the extent to which disclosure by listed SMEs will be demanded by financial market participants under the SFDR and adjust the scope of the NFRD accordingly.